

JS 44 (Rev. 08/18)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

John PHILLIPS and Donna PHILLIPS,

(b) County of Residence of First Listed Plaintiff Middlesex County, NJ
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Paul L. Garelick, Esq. - Lombardi & Lombardi, PA
1862 OakTree Road, PO Box 2065
Edison, NJ 08818 (732) 906-1500

DEFENDANTS

SNAP-ON INCORPORATED, et al.

County of Residence of First Listed Defendant Kenosha County, WI
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
John E. Tyrrell, Esq. - Ricci Tyrrell Johnson & Grey
750 Route 73 South - Suite 202B
Marlton, NJ 08053 (856) 810-8860

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(a), 1441 and 1446 - Diversity of Citizenship - Removal from State Court
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/30/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JOHN PHILLIPS, an individual; and DONNA
PHILLIPS, his spouse, per quod,

Plaintiff,

v.

MAC TOOLS, a division, affiliate or
subsidiary of STANLEY BLACK &
DECKER, INC.; SNAP-ON, INC.; JOHN
DOE 1-5, a fictitiously named individual; ABC
COMPANY 1-5, a fictitiously named business
entity,

Defendants.

Docket No.

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Defendant, SNAP-ON INCORPORATED, through its undersigned counsel, pursuant to 28 U.S.C. § 1332, 1441 and 1446, hereby removes to the United States District Court for the District of New Jersey, the action captioned JOHN PHILLIPS, an individual; and DONNA PHILLIPS, his spouse, per quod v. MAC TOOLS, a division, affiliate or subsidiary of STANLEY BLACK & DECKER, INC.; SNAP-ON INC.; JOHN DOE 1-5, a fictitiously named individual; ABC COMPANY 105, a fictitiously named business entity, Civil Action No. MID-L-027-19 which is pending in the Superior Court of New Jersey, Law Division, Middlesex County. In support of said removal, SNAP-ON INCORPORATED avers as follows:

1. At all times relevant hereto, including the commencement of the action and at the time of removal, Defendant SNAP-ON INCORPORATED is and was a Delaware corporation with its principal place of business located in Kenosha, Wisconsin.

2. At all times relevant hereto, including the commencement of the action and at the time of removal, Defendant MAC TOOLS is and was a division of Stanley Industrial & Automotive, LLC. At all times relevant hereto, including the commencement of the action and at the time of removal, Stanley Industrial & Automotive, LLC is and was a limited liability company organized under the laws of Delaware which is 100% owned by its sole member, Black & Decker (U.S.). At all times relevant hereto, including the commencement of the action and at the time of removal, Black & Decker (U.S.) is and was a Maryland corporation with its principal place of business located in Towson, MD.

3. According to the Complaint and First Amended Complaint in the above-captioned action, Plaintiffs John Phillips and Donna Phillips are each adult residents and citizens of the State of New Jersey residing at 11 Danny Place, Avenel, Township of Woodbridge, County of Middlesex.

4. A natural person is a citizen of the state where he or she is domiciled. A corporation is a citizen both of the state where it is incorporated and of the state where it has its principal place of business. The citizenship of an LLC is determined by the citizenship of its members. See *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 419-420 (3d Cir. 2010).

5. Pursuant to 28 U.S.C. §1441 (b), in determining whether a civil action may be properly removed under U.S.C. §1332 (a), the citizenship of defendants sued under fictitious names shall be disregarded.

6. The above captioned state court action was filed in New Jersey Superior Court, Middlesex County, Law Division on January 2, 2019.

7. SNAP-ON INCORPORATED initially received a copy of the Summons and Complaint on January 10, 2019.

8. This Notice of Removal is timely filed pursuant to 28 U.S.C. §1446 (b), in that it is filed within 30 days after initial receipt by SNAP-ON INCORPORATED, by service or otherwise, of a copy of the Summons and Complaint.

9. SNAP-ON INCORPORATED was subsequently served with a First Amended Complaint on January 18, 2019.

10. Copies of the pleadings served on defendant SNAP-ON INCOPORATED are attached hereto as Exhibit "A" which, upon information and belief, constitutes all of the records and proceedings in the state court.

11. In the First Amended Complaint, the Plaintiff John Phillips alleges that he has sustained serious and permanent personal injuries and damages as a result of the acts or omissions of the Defendants.

12. In the First Amended Complaint, Plaintiffs allege John Phillips was injured in an accident occurring on June 18, 2018.

13. In the First Amended Complaint, Plaintiff John Phillips alleges that his injuries include: "left eye injury with detached retina requiring surgeries; 100 percent vision loss of left eye; eventual removal of left eye scheduled for January 2019; brain injury with cognitive deficits; cervical disc herniation; hearing loss; emotional/psychological injuries; and other injuries". See Plaintiffs' First Amended Complaint, ¶ 16.

14. Plaintiffs allege that due to the injuries, hundreds of thousands of dollars for hospital and medical expenses have been expended. See Plaintiffs' First Amended Complaint, ¶ 16b.

15. Plaintiff John Phillips alleges his injuries are permanent and it is unlikely he will ever return to gainful employment. See Plaintiffs' First Amended Complaint, ¶ 16c, 16d.

16. Based upon the allegations of Plaintiffs' First Amended Complaint, the amount in controversy between Plaintiffs and Defendants exceeds the sum of \$75,000.00 (Seventy-Five Thousand Dollars), exclusive of interest and costs. Because the amount in controversy exceeds the jurisdictional requirement and because of the complete diversity of citizenship between the Plaintiffs and Defendants, this Court has jurisdiction over the case pursuant to 28 U.S.C. §§ 1332 and 1441.

17. A copy of this Notice of Removal will be promptly filed with the Clerk for the Superior Court of the State of New Jersey, Middlesex County and served on the Plaintiffs.

18. The removal of this action to the District of New Jersey does not waive the Defendants' ability to assert any defense in this action.

19. Venue is proper in this Court pursuant to 28 U.S.C. §1441 (a) because the District Court for the District of New Jersey is the district court embracing the state court where the action was filed.

20. Defendant MAC TOOLS consents to this removal pursuant to 28 U.S.C. §1446 (b) as indicated in Exhibit "B" hereto.

21. If any question arises as to the propriety of the removal of this action, Defendant SNAP-ON INCORPORATED requests the opportunity to conduct limited discovery and to present a brief oral argument in support of its position that this case is removable.

WHEREFORE, Defendant, SNAP-ON INCORPORATED has removed this action to the United States District Court for the District of New Jersey.

Dated this 30th day of January, 2019.

Respectfully submitted,

RICCI TYRRELL JOHNSON & GREY

By: 

John E. Tyrrell
Counsel for Defendant
Snap-On Incorporated

Willow Ridge Executive Office Park
750 Route 73 South, Suite 202B
Marlton, NJ 08053
Phone: (856) 810-8860
Fax: (856) 810-8861
Email: jtyrrell@rtjglaw.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOHN PHILLIPS, an individual; and DONNA
PHILLIPS, his spouse, per quod,

Plaintiff,

v.

MAC TOOLS, a division, affiliate or
subsidiary of STANLEY BLACK &
DECKER, INC.; SNAP-ON, INC.; JOHN
DOE 1-5, a fictitiously named individual; ABC
COMPANY 1-5, a fictitiously named business
entity,

Defendants.

Docket No.

CERTIFICATE OF SERVICE

The undersigned counsel hereby verifies/certifies that on this day, a true and correct copy
of the foregoing Notice of Removal was served on the following, via first-class mail, pre-paid,
postage pre-paid as follows:

Paul R. Garelick, Esquire
Lombardi & Lombardi, PA
1862 Oak Tree Road
P.O. Box 2065
Edison, NJ 08818
Attorneys for Plaintiffs

RICCI TYRELL JOHNSON & GREY

By:

John E. Tyrrell
Counsel for Defendant
Snap-On Incorporated

Willow Ridge Executive Office Park
750 Route 73 South, Suite 202B
Marlton, NJ 08053
Phone: (856) 810-8860
Fax: (856) 810-8861
Email: jtyrrell@rtjglaw.com

Date: January 30, 2019

EXHIBIT A

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Lombardi & Lombardi, PA
 1862 Oak Tree Road, P.O. Box 2065
 Edison, NJ 08818
 Tel. (732) 906-1500; Fax (732) 906-7625
 Attorneys for Plaintiff(s); File No. PRG

JOHN PHILLIPS, an individual; and	:	SUPERIOR COURT OF NEW JERSEY
DONNA PHILLIPS, his spouse, per quod,	:	MIDDLESEX COUNTY
	:	LAW DIVISION
Plaintiffs	:	
	:	DOCKET NO. MID-L-027-19
v.	:	
	:	<u>CIVIL ACTION</u>
MAC TOOLS, a division, affiliate or	:	
subsidiary of STANLEY BLACK &	:	FIRST AMENDED COMPLAINT;
DECKER, INC.; SNAP-ON, INC.;	:	JURY DEMAND; DESIGNATION
JOHN DOE 1-5, a fictitiously named	:	OF TRIAL COUNSEL; R. 4:5-1
individual; ABC COMPANY 1-5, a	:	and R.1:38-7(b) CERTIFICATIONS
fictitiously named business entity,	:	
	:	
Defendants	:	

Plaintiffs, John Phillips, an individual, and Donna Phillips, his spouse, per quod,
 residing at 11 Danny Place, Avenel, Township of Woodbridge, County of Middlesex and
 State of New Jersey, by way of First Amended Complaint against the defendants says:

FIRST COUNT
(Factual Allegations)

1. Plaintiff, John Phillips (hereinafter "John" and/or "Plaintiff, John") is 52 years of age.
2. Plaintiff, John, is married to the plaintiff, Donna Phillips (hereinafter "Donna" and/or "Plaintiff, Donna"), and they reside together at 11 Danny Place, Avenel, Township of Woodbridge.

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3. Plaintiff, John, as of June 18, 2018, had been employed as an automobile mechanic for over thirty (30) years.

4. As of June 18, 2018, and for several years prior thereto, the plaintiff, John, had been employed as an automobile mechanic for JMB Automotive Corp. at 265 Plainfield Avenue, Township of Edison, County of Middlesex and State of New Jersey.

5. At all times mentioned herein, the defendant, Mac Tools, a division, affiliate or subsidiary of Stanley Black & Decker, Inc. (hereinafter "Mac" and/or "Defendant, Mac"), did design, manufacture, assemble, market, sell and distribute automotive hand tools and tool sets, including automotive ratchets, wrenches and other automotive hand tools.

6. Among the tools and tool sets designed, manufactured, assembled, marketed, sold and distributed by the defendant, Mac, was an "8 Piece Metric Triple Square Bit Driver Set", 3/8" Drive, said set identified by the defendant, Mac, as SMXT58B, which set contained eight (8) 3/8" drive, bit drivers/socket bits of various sizes.

7. The bit driver/socket bit set identified in paragraph 6 was labeled as follows:

- For use on Audi, Mercedes, VW, Porsche and other import cars;
- Compact, one-piece design;
- Polished chrome finish with black tips;
- Packaged in blow mold case for easing storage.

8. At all times mentioned herein, the defendant, Snap-On, Incorporated (hereinafter "Snap-On" and/or Defendant, Snap-On"), did design, manufacture, market, sell and distribute hand automotive tools, including a "Breaker Bar" identified as a 24 inch, 1/2 inch drive, breaker bar, "SN24B".

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8a. A breaker bar is, essentially, a long metal wrench to which a bit driver/socket bit is applied; used to tighten or untighten fasteners such as bolts.

9. At all times mentioned herein, the defendant, Snap-On, Incorporated (hereinafter "Snap-On" and/or defendant, Snap-On"), did design, manufacture, market, sell and distribute hand automotive tools, including a reducer/adaptor used to adapt the ½ drive Breaker Bar for "3/8" drive, bit drivers/socket bits. Said reducer/adaptor is identified and labeled by the defendant, Snap-On, as "GSAAF-16" and also labeled "Warning Nonimpact Max Torque 2000 In LB".

10. On June 18, 2018 during the course of his employment, plaintiff, John, was assigned by his employer, JMB Automotive Corp., the task of replacing a rear wheel bearing on a 2006 Volkswagen Jetta; VIN 3VWRG 81K16 M7650 89.

11. On June 18, 2018, in attempting to loosen and remove the existing bolt from the wheel bearing, plaintiff, John, utilized the Snap-On breaker bar identified in paragraph 8; the reducer/adaptor identified in paragraph 9, along with the 3/8-inch drive, 16 mm bit driver/socket bit from the bit driver set identified in paragraph 6.

11a. The Snap-On breaker bar was purchased by the plaintiff, John, several years prior to June 18, 2018.

11b. The Mac Bit Driver Set was owned and provided by plaintiff's employer, JMB Automotive Corp. Said set was rarely, if ever, used prior to June 18, 2018.

12. On June 18, 2018, the plaintiff, John, did utilize eye protection goggles during his attempt to remove the bolt from the rear wheel bearing on the 2006 Volkswagen Jetta; VIN 3VWRG 81K16 M7650 89.

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13. Plaintiff, John, in an effort to remove the rear wheel bearing bolt, inserted the 3/8-inch drive, 16 mm bit driver/socket bit into the bolt and applied rotational force to the handle end of the Snap-On breaker bar.

14. Without notice or warning to the plaintiff, John, upon application of rotational force to the handle end of the breaker bar, the Mac 3/8-inch drive, 16 mm bit driver/socket bit suffered a mechanical failure; said bit drive/socket bit fractured into two (2) pieces.

15. As a result of the upward, rotational force exerted by the plaintiff, John, on the handle end of the Snap-On breaker bar, and as a further result of the failure of the 3/8 inch drive, 16 mm bit driver/socket bit, the handle of the Snap-On breaker bar rotated up toward the forehead of the plaintiff, John, making blunt force contact with plaintiff's head and left eye orbit.

16. As a result of the June 18, 2018 incident described above, the plaintiff, John, suffered serious injuries, including left eye injury with detached retina requiring surgeries; 100% vision loss of left eye; eventual removal of left eye scheduled for January 2019; brain injury with cognitive deficits; cervical disc herniation; hearing loss; emotional/psychological injuries; and other injuries.

16a. Plaintiff has been caused to sustain pain and suffering from June 18, 2018 to present and continuing.

16b. The Travelers Insurance Companies, the workers' compensation insurance company of JMB Automotive Corp., has been required to expend hundreds of thousands of dollars for hospital and medical expenses incurred to treat the injuries of the plaintiff, John;

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there will be future and continuing medical expenses. Travelers Insurance Company has asserted a lien against any third-party tort recovery.

16c. Plaintiff has been prevented from attending to his employment at JMB Automotive Corp; it is unlikely that the plaintiff, John, will ever return to gainful employment.

16d. Plaintiff's injuries are permanent in nature and plaintiff will suffer the future residuals of his injuries related to the June 18, 2018 incident.

16e. Plaintiff, John, has and will in the future be unable to engage in his usual activities and affairs.

SECOND COUNT

(New Jersey Products Liability Act; Defendant, Mac)

17. Plaintiff, John, repeats and realleges each and every paragraph of the First Count, 1 through 16, as if set forth at length herein.

18. Defendant, Mac, designed, manufactured, assembled, marketed, sold and distributed a defective product, namely the 3/8-inch drive, 16 mm bit driver/socket bit.

19. The 3/8-inch drive, 16 mm bit driver/socket bit deviated from design specifications, formulae, or performance standards of the manufacturer or from otherwise identical units manufactured to the same manufacturing specifications or formulae.

In this case, the 16 mm bit driver/socket bit failed and fractured when torque force was applied to it by the breaker bar.

20. The 3/8-inch drive, 16 mm bit driver/socket bit and the set in which it was included failed to contain an adequate warning that its use with a 1/2-inch drive breaker bar

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could result in metal failure of the bit driver/socket bit; also, there was no warning as to what torque could result in a metal failure of the bit driver.

21. The 3/8-inch drive, 16 mm bit driver/socket bit (i) was designed in a defective manner and (ii) a safe and reasonably feasible design alternative existed or (iii) the risks involved in the product's use outweigh the product's utility.

22. The 3/8-inch drive, 16 mm bit driver/socket bit was advertised and labeled for use on Volkswagen vehicles; however, the said bit driver/socket bit failed when being used in an authorized way to loosen a bolt from a Volkswagen rear-wheel bearing.

23. The defendant, Mac, has liability to the plaintiff, John, under the New Jersey Product Liability Act, NJSA 2A:58C-1 et seq.

THIRD COUNT
(Breach of Warranty; Defendant, Mac)

24. Plaintiff, John, repeats and realleges each and every paragraph of the First and Second Counts, 1 through 23, as if set forth at length herein.

25. The 3/8-inch drive, 16 mm bit driver/socket bit and the bit driver set in which it was included contained a warranty that it was designed for use on Volkswagen vehicles, which was a warranty of fitness for a particular purpose, i.e. use to loosen bolts on Volkswagen wheel bearings.

26. The 3/8-inch drive, 16 mm bit driver/socket bit contained an implied warranty that it was safe for use during foreseeable applications, including loosening a Volkswagen wheel bearing bolt.

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27. The breakage and failure of the 16 mm bit driver/socket bit constituted a breach of warranties, express and implied, by the defendant, Mac.

FOURTH COUNT

(New Jersey Products Liability Act; Defendant, Snap-On)

28. Plaintiff, John, repeats and realleges each and every paragraph of the First, Second and Third Counts, 1 through 27, as if set forth at length.

29. Defendant, Snap-On, designed, manufactured, assembled, marketed, sold and distributed defective products, namely:

- (I) 24-inch, 1/2-inch drive Breaker Bar, "SN24B" and/or
- (ii) Reducer/adaptor to adapt a 1/2-inch drive breaker bar
for use with 3/8-inch drive, bit drivers/wrenches.

30. The products identified in the preceding paragraph were defective because they (i) failed to contain an adequate warning that their use on a 3/8 inch drive, 16 mm bit driver/socket bit could result in a failure of the said bit driver; and/or (ii) were designed in a defective manner while a safe and reasonably feasible design alternative existed and/or the risks involved in the product's use outweighed the product's utility.

30a. In this case, the torque applied to the 16mm bit driver/socket bit caused the said bit driver to fracture and break into two (2) parts.

31. Defendant, Snap-On, is liable to the plaintiff, John, under the New Jersey Products Liability Act, NJSA 2A:58C-1 et seq.

FIFTH COUNT

(Plaintiff, Donna Phillips, Per Quod)

32. Plaintiff, Donna Phillips, per quod, repeats and realleges each and every

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paragraph of the First, Second, Third and Fourth Counts, 1 through 31, as if set forth at length herein.

33. As a result of the tortious conduct of the defendants, plaintiff, Donna, has been deprived of her spouse's consortium, comfort, services and affection from June 18, 2018 to the present time and continuing.

SIXTH COUNT
(Fictitious Defendants)

34. Plaintiffs, repeat and reallege each and every paragraph of the First, Second, Third, Fourth and Fifth Counts, 1 through 33 as if set forth at length herein.

35. Plaintiffs have impleaded, herein, certain fictitious persons and entities identified in the caption as John Doe 1-5, a fictitious person, and ABC Company 1-5, a fictitious entity.

36. Said fictitiously named individuals and entities represent persons or entities, the identify of which is unknown, who designed, manufactured, sold, marketed and/or distributed the defective products identified in the prior Counts and/or relevant component parts thereof and/or labeled the defective products.

37. Plaintiffs reserve the right to, in the future, substitute actual persons and entities for the fictitiously named persons and entities.

WHEREFORE, the plaintiffs, John Phillips and Dona Phillips, per quod, demand judgment against all defendants, jointly and severally, for compensatory damages, together with interest and costs of suit.

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JURY DEMAND

Plaintiffs do hereby demand a trial by a jury of six (6) persons on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Michael F. Lombardi, Esq. is hereby designated as trial counsel.

CERTIFICATION: R.4:5-1

The undersigned certifies that, to the best of his knowledge and belief, there is not currently pending nor anticipated any other related civil action or arbitration proceeding regarding the subject matter of the within lawsuit.


CERTIFICATION R. 1:38-7(b)

The undersigned certifies that the within pleading contains no personal confidential identifiers for any party named herein. The undersigned recognizes a responsibility to ensure the same as to subsequent pleadings.

I certify that the foregoing statements made by me in this Certification are true. I am aware that if any statement contained herein is willfully false, I am subject to punishment.

LOMBARDI & LOMBARDI, P.A.
Attorneys for Plaintiffs

Dated: January 18, 2019

By: 
Paul R. Garelick

Lombardi & Lombardi, PA
 1862 Oak Tree Road, P.O. Box 2065
 Edison, NJ 08818
 Tel. (732) 906-1500; Fax (732)906-7625
 Attorneys for Plaintiff(s); File No.

JOHN PHILLIPS, an individual; and	:	SUPERIOR COURT OF NEW JERSEY
DONNA PHILLIPS, his spouse, per quod,	:	MIDDLESEX COUNTY
	:	LAW DIVISION
Plaintiffs	:	
	:	DOCKET NO. MID-L-027-19
v.	:	
	:	<u>CIVIL ACTION</u>
MAC TOOLS, a division, affiliate or	:	
subsidiary of STANLEY BLACK &	:	SUMMONS
DECKER, INC.; SNAP-ON, INC.;	:	
JOHN DOE 1-5, a fictitiously named	:	
individual; ABC COMPANY 1-5, a	:	
fictitiously named business entity,	:	
Defendants	:	

From the State of New Jersey, To the Defendant (s) Named Above:

The plaintiff, named above, has filed a lawsuit in the Superior Court of New Jersey. The Complaint attached to this Summons states the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written Answer or Motion and proof of service with the Deputy Clerk of the Superior Court in the county listed above within 35 days from the date you received this Summons, not counting the date you received it. (A directory of the addresses of each Deputy Clerk of the Superior Court is available in the Civil Division Management office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deputyclerklawref.pdf.) If the Complaint is one in foreclosure, then you must file your written Answer or Motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, CN-971, Trenton, New Jersey 08625. A filing fee* payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the Deputy Clerk of the Superior Court) must accompany your Answer or Motion when it is filed. You must also send a copy of your Answer or Motion to plaintiff's attorney, whose name and address appear above, or to plaintiff if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written Answer or Motion (with fee of \$175.00 and completed Case Information Statement) if you want the Court to hear your defense.

If you do not file and serve a written Answer or Motion within 35 days, the Court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services and Lawyer Referral Services is available in the County Civil Division Management Office and online http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

Dated: January 3, 2019



Michelle M. Smith
Clerk of the Superior Court

Name of Defendant to be served: SNAP-ON, Inc.

Address of Defendant to be served: 2801 80th Street
Kenosha, WI 53143

Civil Case Information Statement

Case Details: MIDDLESEX | Civil Part Docket# L-000027-19

Case Caption: PHILLIPS JOHN VS MAC TOOLS, A
DIVISION,

Case Initiation Date: 01/02/2019

Attorney Name: MICHAEL F LOMBARDI

Firm Name: LOMBARDI & LOMBARDI

Address: 1862 OAK TREE ROAD

EDISON NJ 088200000

Phone:

Name of Party: PLAINTIFF : PHILLIPS, JOHN

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: PRODUCT LIABILITY

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same
transaction or occurrence)? YES

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the
court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

01/02/2019
Dated

/s/ MICHAEL F LOMBARDI
Signed

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PAUL R. GARELICK, ESQ.; Attorney ID #017491993
 Lombardi & Lombardi, PA
 1862 Oak Tree Road, P.O. Box 2065
 Edison, NJ 08818
 Tel. (732) 906-1500; Fax (732)906-7625
 Attorneys for Plaintiff(s); File No. PRG

JOHN PHILLIPS, an individual; and	: SUPERIOR COURT OF NEW JERSEY
DONNA PHILLIPS, his spouse, per quod,	: MIDDLESEX COUNTY
	: LAW DIVISION
Plaintiffs	: DOCKET NO.
v.	: <u>CIVIL ACTION</u>
MAC TOOLS, a division, affiliate or	: COMPLAINT; JURY DEMAND;
subsidiary of STANLEY BLACK &	: DESIGNATION OF TRIAL COUNSEL;
DECKER, INC.; SNAP-ON, INC.;	: CERTIFICATIONS R.4:5-1, R.1:38-7(b).
JOHN DOE 1-5, a fictitiously named	
individual; ABC COMPANY 1-5, a	
fictitiously named business entity,	
Defendants	

Plaintiffs, John Phillips, an individual, and Donna Phillips, his spouse, per quod, residing at 11 Danny Place, Avenel, Township of Woodbridge, County of Middlesex and State of New Jersey, by way of Complaint against the defendants says:

FIRST COUNT
(Factual Allegations)

1. Plaintiff, John Phillips (hereinafter "John" and/or "Plaintiff, John") is 52 years of age.
2. Plaintiff, John, is married to the plaintiff, Donna Phillips (hereinafter "Donna" and/or "Plaintiff, Donna"), and they reside together at 11 Danny Place, Avenel, Township of Woodbridge.

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3. Plaintiff, John, as of June 18, 2018, had been employed as an automobile mechanic for over thirty (30) years.

4. As of June 18, 2018, and for several years prior thereto, the plaintiff, John, had been employed as an automobile mechanic for JMB Automotive Corp. at 265 Plainfield Avenue, Township of Edison, County of Middlesex and State of New Jersey.

5. At all times mentioned herein, the defendant, Mac Tools, a division, affiliate or subsidiary of Stanley Black & Decker, Inc. (hereinafter "Mac" and/or "Defendant, Mac"), did design, manufacture, assemble, market, sell and distribute automotive hand tools and tool sets, including automotive ratchets, wrenches and other automotive hand tools.

6. Among the tools and tool sets designed, manufactured, assembled, marketed, sold and distributed by the defendant, Mac, was an "8 Piece Metric Triple Square Bit Driver Set", 3/8" Drive, said set identified by the defendant, Mac, as SMXT58B, which set contained eight (8) 3/8" drive, bit drivers/socket bits of various sizes.

7. The bit driver/socket bit set identified in paragraph 6 was labeled as follows:

- For use on Audi, Mercedes, VW, Porsche and other import cars;
- Compact, one-piece design;
- Polished chrome finish with black tips;
- Packaged in blow mold case for easing storage.

8. At all times mentioned herein, the defendant, Snap-On, Incorporated (hereinafter "Snap-On" and/or Defendant, Snap-On"), did design, manufacture, market, sell and distribute hand automotive tools, including a "Breaker Bar" identified as a 24 inch, 1/2 inch drive, breaker bar, "SN24B".

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8a. A breaker bar is, essentially, a long metal wrench to which a bit driver/socket bit is applied; used to tighten or untighten fasteners such as bolts.

9. At all times mentioned herein, the defendant, Snap-On, Incorporated (hereinafter "Snap-On" and/or defendant, Snap-On"), did design, manufacture, market, sell and distribute hand automotive tools, including a reducer/adaptor used to adapt the 1/2 drive Breaker Bar for "3/8" drive, bit drivers/socket bits. Said reducer/adaptor is identified and labeled by the defendant, Snap-On, as "GSAAF-16" and also labeled "Warning Nonimpact Max Torque 2000 In LB".

10. On June 18, 2018 during the course of his employment, plaintiff, John, was assigned by his employer, JMB Automotive Corp., the task of replacing a rear wheel bearing on a 2008 Volkswagen Passat.

11. On June 18, 2018, in attempting to loosen and remove the existing bolt from the wheel bearing, plaintiff, John, utilized the Snap-On breaker bar identified in paragraph 8; the reducer/adaptor identified in paragraph 9, along with the 3/8-inch drive, 16 mm bit driver/socket bit from the bit driver set identified in paragraph 6.

11a. The Snap-On breaker bar was purchased by the plaintiff, John, several years prior to June 18, 2018.

11b. The Mac Bit Driver Set was owned and provided by plaintiff's employer, JMB Automotive Corp. Said set was rarely, if ever, used prior to June 18, 2018.

12. On June 18, 2018, the plaintiff, John, did utilize eye protection goggles during his attempt to remove the bolt from the rear wheel bearing on the 2008 Volkswagen Passat.

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13. Plaintiff, John, in an effort to remove the rear wheel bearing bolt, inserted the 3/8-inch drive, 16 mm bit driver/socket bit into the bolt and applied rotational force to the handle end of the Snap-On breaker bar.

14. Without notice or warning to the plaintiff, John, upon application of rotational force to the handle end of the breaker bar, the Mac 3/8-inch drive, 16 mm bit driver/socket bit suffered a mechanical failure; said bit drive/socket bit fractured into two (2) pieces.

15. As a result of the upward, rotational force exerted by the plaintiff, John, on the handle end of the Snap-On breaker bar, and as a further result of the failure of the 3/8 inch drive, 16 mm bit driver/socket bit, the handle of the Snap-On breaker bar rotated up toward the forehead of the plaintiff, John, making blunt force contact with plaintiff's head and left eye orbit.

16. As a result of the June 18, 2018 incident described above, the plaintiff, John, suffered serious injuries, including left eye injury with detached retina requiring surgeries; 100% vision loss of left eye; eventual removal of left eye scheduled for January 2019; brain injury with cognitive deficits; cervical disc herniation; hearing loss; emotional/psychological injuries; and other injuries.

16a. Plaintiff has been caused to sustain pain and suffering from June 18, 2018 to present and continuing.

16b. The Travelers Insurance Companies, the workers' compensation insurance company of JMB Automotive Corp., has been required to expend hundreds of thousands of dollars for hospital and medical expenses incurred to treat the injuries of the plaintiff, John;

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there will be future and continuing medical expenses. Travelers Insurance Company has asserted a lien against any third-party tort recovery.

16c. Plaintiff has been prevented from attending to his employment at JMB Automotive Corp; it is unlikely that the plaintiff, John, will ever return to gainful employment.

16d. Plaintiff's injuries are permanent in nature and plaintiff will suffer the future residuals of his injuries related to the June 18, 2018 incident.

16e. Plaintiff, John, has and will in the future be unable to engage in his usual activities and affairs.

SECOND COUNT

(New Jersey Products Liability Act; Defendant, Mac)

17. Plaintiff, John, repeats and realleges each and every paragraph of the First Count, 1 through 16, as if set forth at length herein.

18. Defendant, Mac, designed, manufactured, assembled, marketed, sold and distributed a defective product, namely the 3/8-inch drive, 16 mm bit driver/socket bit.

19. The 3/8-inch drive, 16 mm bit driver/socket bit deviated from design specifications, formulae, or performance standards of the manufacturer or from otherwise identical units manufactured to the same manufacturing specifications or formulae.

In this case, the 16 mm bit driver/socket bit failed and fractured when torque force was applied to it by the breaker bar.

20. The 3/8-inch drive, 16 mm bit driver/socket bit and the set in which it was included failed to contain an adequate warning that its use with a 1/2-inch drive breaker bar

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could result in metal failure of the bit driver/socket bit; also, there was no warning as to what torque could result in a metal failure of the bit driver.

21. The 3/8-inch drive, 16 mm bit driver/socket bit (i) was designed in a defective manner and (ii) a safe and reasonably feasible design alternative existed or (iii) the risks involved in the product's use outweigh the product's utility.

22. The 3/8-inch drive, 16 mm bit driver/socket bit was advertised and labeled for use on Volkswagen vehicles; however, the said bit driver/socket bit failed when being used in an authorized way to loosen a bolt from a Volkswagen rear-wheel bearing.

23. The defendant, Mac, has liability to the plaintiff, John, under the New Jersey Product Liability Act, NJSA 2A:58C-1 et seq.

THIRD COUNT
(Breach of Warranty; Defendant, Mac)

24. Plaintiff, John, repeats and realleges each and every paragraph of the First and Second Counts, 1 through 23, as if set forth at length herein.

25. The 3/8-inch drive, 16 mm bit driver/socket bit and the bit driver set in which it was included contained a warranty that it was designed for use on Volkswagen vehicles, which was a warranty of fitness for a particular purpose, i.e. use to loosen bolts on Volkswagen wheel bearings.

26. The 3/8-inch drive, 16 mm bit driver/socket bit contained an implied warranty that it was safe for use during foreseeable applications, including loosening a Volkswagen wheel bearing bolt.

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27. The breakage and failure of the 16 mm bit driver/socket bit constituted a breach of warranties, express and implied, by the defendant, Mac.

FOURTH COUNT

(New Jersey Products Liability Act; Defendant, Snap-On)

28. Plaintiff, John, repeats and realleges each and every paragraph of the First, Second and Third Counts, 1 through 27, as if set forth at length.

29. Defendant, Snap-On, designed, manufactured, assembled, marketed, sold and distributed defective products, namely:

- (I) 24-inch, 1/2-inch drive Breaker Bar, "SN24B" and/or
- (ii) Reducer/adaptor to adapt a 1/2-inch drive breaker bar
for use with 3/8-inch drive, bit drivers/wrenches.

30. The products identified in the preceding paragraph were defective because they (i) failed to contain an adequate warning that their use on a 3/8 inch drive, 16 mm bit driver/socket bit could result in a failure of the said bit driver; and/or (ii) were designed in a defective manner while a safe and reasonably feasible design alternative existed and/or the risks involved in the product's use outweighed the product's utility.

30a. In this case, the torque applied to the 16mm bit driver/socket bit caused the said bit driver to fracture and break into two (2) parts.

31. Defendant, Snap-On, is liable to the plaintiff, John, under the New Jersey Products Liability Act, NJSA 2A:58C-1 et seq.

FIFTH COUNT

(Plaintiff, Donna Phillips, Per Quod)

32. Plaintiff, Donna Phillips, per quod, repeats and realleges each and every

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paragraph of the First, Second, Third and Fourth Counts, 1 through 31, as if set forth at length herein.

33. As a result of the tortious conduct of the defendants, plaintiff, Donna, has been deprived of her spouse's consortium, comfort, services and affection from June 18, 2018 to the present time and continuing.

SIXTH COUNT
(Fictitious Defendants)

34. Plaintiffs, repeat and reallege each and every paragraph of the First, Second, Third, Fourth and Fifth Counts, 1 through 33 as if set forth at length herein.

35. Plaintiffs have impleaded, herein, certain fictitious persons and entities identified in the caption as John Doe 1-5, a fictitious person, and ABD Company 1-5, a fictitious entity.

36. Said fictitiously named individuals and entities represent persons or entities, the identify of which is unknown, who designed, manufactured, sold, marketed and/or distributed the defective products identified in the prior Counts and/or relevant component parts thereof and/or labeled the defective products.

37. Plaintiffs reserve the right to, in the future, substitute actual persons and entities for the fictitiously named persons and entities.

WHEREFORE, the plaintiffs, John Phillips and Dona Phillips, per quod, demand judgment against all defendants, jointly and severally, for compensatory damages, together with interest and costs of suit.

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JURY DEMAND

Plaintiffs do hereby demand a trial by a jury of six (6) persons on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Michael F. Lombardi, Esq. is hereby designated as trial counsel.

CERTIFICATION; R.4:5-1

The undersigned certifies that, to the best of his knowledge and belief, there is not currently pending nor anticipated any other related civil action or arbitration proceeding regarding the subject matter of the within lawsuit.

CERTIFICATION R. 1:38-7(b)

The undersigned certifies that the within pleading contains no personal confidential identifiers for any party named herein. The undersigned recognizes a responsibility to ensure the same as to subsequent pleadings.

I certify that the foregoing statements made by me in this Certification are true. I am aware that if any statement contained herein is willfully false, I am subject to punishment.

LOMBARDI & LOMBARDI, P.A.
Attorneys for Plaintiffs

Dated: January 2, 2019

By: Paul R. Garelick
Paul R. Garelick

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JOHN PHILLIPS, an individual; and DONNA
PHILLIPS, his spouse, per quod,

Plaintiff,

v.

MAC TOOLS, a division, affiliate or
subsidiary of STANLEY BLACK &
DECKER, INC.; SNAP-ON, INC.; JOHN
DOE 1-5, a fictitiously named individual; ABC
COMPANY 1-5, a fictitiously named business
entity,

Defendants.

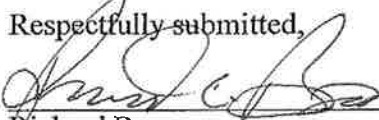
Docket No.

CONSENT TO REMOVAL

Defendant MAC Tools, by its undersigned counsel, consents to the Removal of this action by Defendant Snap-on Incorporated, and states as follows:

1. Both at the time of the filing of the state court action and at the time of filing of this Removal, Defendant MAC Tools is a division of Stanley Industrial & Automotive, LLC. Stanley Industrial & Automotive, LLC is a limited liability company organized under the laws of Delaware which is 100% owned by its sole member, Black & Decker (U.S.).
2. Both at the time of the filing of the state court action and at the time of filing of this Removal, Black & Decker (U.S.) is a Maryland corporation with its principal place of business located at 701 E. Joppa Road, Towson, MD 21286.
3. Defendant MAC Tools consents to the removal of this action by Defendant Snap-on Incorporated.

Respectfully submitted,


Richard Bryan
Counsel for MAC Tools

Cipriani & Werner
155 Gaither Drive Suite B
Mt. Laurel, NJ 08054
Phone: (856) 761-3800
rbryan@c-wlaw.com